



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 29, 2011

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Ste. 800  
Richardson, Texas 75081

OR2011-04304

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412584.

The Town of Flower Mound (the "town"), which you represent, received a request for all police reports pertaining to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history

information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request requires the town to compile unspecified police records concerning the named individual and, thus, implicates this individual's right to privacy. Therefore, to the extent the town maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the town must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, that you have submitted information that does not list the named individual as suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the named individual. Thus, we will address your argument against disclosure of this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code §552.108(a)(2). You state case number 10-002739 relates to a closed criminal case that did not result in a conviction or deferred adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) is generally applicable to case number 10-002739.

We note, however, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the town may withhold case number 10-002739 under section 552.108(a)(2).

You contend, however, that some of the basic information related to case number 10-002739, is also excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 343 (1982) (references in emergency medical records to drug overdoses, acute alcohol intoxication, obstetrical or gynecological illnesses, convulsions or seizures, and emotional or mental distress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 470 (1987) (illness from severe emotional and job-related stress). Upon review, however, we find you have failed to demonstrate how any of the basic information in case number 10-002739 is highly intimate or embarrassing and not of legitimate public interest.

Therefore, the town may not withhold any of the basic information in case number 10-002739 under section 552.101 on the basis of common-law privacy.

In summary, to the extent the town maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the town must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the town may withhold case number 10-002739 under section 552.108(a)(2) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/eeg

Ref: ID# 412584

Enc. Submitted documents

c: Requestor  
(w/o enclosures)